

STATE OF CALIFORNIA
STATE WATER RESOURCES CONTROL BOARD

In the Matter of Applications 23782,)
24003, and 24030 of Homer L. and)
Mildred E. Hall, Robert Starner, and)
Paul David Cross, Respectively, to)
Appropriate from Tributaries of the)
Fresno River in Madera County.)

Decision 1462

DECISION APPROVING APPLICATION IN PART

BY THE BOARD:

Homer L. and Mildred E. Hall, Robert Starner, and Paul David Cross having filed, respectively, Applications 23782, 24003 and 24030 for permits to appropriate unappropriated water; protests having been received; the applicants and protestants having stipulated to proceedings in lieu of hearing as provided for by Title 23, California Administrative Code, Section 737; an investigation having been made by the State Water Resources Control Board pursuant to said stipulation; the Board, having considered all available information, finds as follows:

Substance of the Applications

1. (a) Application 23782 is for a permit to appropriate 10 acre-feet per annum (afa) by storage to be collected from December 1 of each year to April 30 of the succeeding year for stockwatering, fire protection, and fish culture purposes from Bean Gulch in Madera County. The point of diversion is to be located within the SE $\frac{1}{4}$ of NW $\frac{1}{4}$, Section 10, T8S, R20E, MDB&M.

(b) Application 24003 is for a permit to appropriate 7.7 afa by storage to be collected from December 1 of each year to April 30 of the succeeding year for domestic, recreational and wildlife enhancement purposes from an unnamed stream in Madera County. The point of diversion is to be located within the SE $\frac{1}{4}$ of SE $\frac{1}{4}$, Section 19, T7S, R22E, MDB&M.

(c) Application 24030 is for a permit to appropriate 18 afa by storage to be collected from November 1 of each year to June 30 of the succeeding year for irrigation, stockwatering and recreational purposes from Bean Gulch in Madera County. The point of diversion is to be located within the SE $\frac{1}{4}$ of NE $\frac{1}{4}$, Section 9, T8S, R20E, MDB&M.

Description of Applicants' Projects

2. Applicants Hall (Application 23782) propose to construct a 6-foot high and 40-foot long dam on Bean Gulch, a tributary of the Fresno River, which will form a reservoir with a capacity of approximately 10-acre feet (af). The dam and reservoir site has a heavy coating of brush which the applicants plan to clear to facilitate construction of the dam and to increase production of water in the watershed.

3. Applicant Starner (Application 24003) has completed construction of a 9-foot high and 350-foot long earth and rock dam on an unnamed tributary of Rancheria Creek. Rancheria Creek flows into China Creek which flows into the Fresno River. The reservoir formed by the dam has a capacity of 7.7 af.

4. Applicant Cross (Application 24030) proposes to construct an 11-foot high and 200-foot long earth dam on Bean Gulch above applicants Hall. The dam will form a reservoir with a capacity of approximately 18 af. The water is to be used for watering approximately 25 sheep, recreation and irrigation of three acres of pasture. The applicant plans to clear brush from a considerable portion of the area above the reservoir to increase production of water in the watershed.

Protestants

5. Madera Irrigation District (Madera) protested all three applications on the basis of possible interference with its claimed adjudicated right to divert 200 cubic feet per second (cfs) from the Fresno River and Permit 10472 (Application 15287) for diversion of an additional 200 cfs from the Fresno River. Madera also protested in its capacity as principal beneficiary of the U. S. Bureau of Reclamation's (Bureau) proposed Hidden Dam and Reservoir to be constructed on the Fresno River below all of the applicants.

6. The Bureau protested all three applications on the basis of its Application 18733 for appropriation of 100,000 afa from Fresno River for its Hidden Project. Hidden Dam has been constructed and storage of water has commenced.

7. Charles G. Ferguson protested Applications 23782 and 24030 (Hall and Cross, respectively) on the basis that their approval would interfere with his License 10070 (Application 23063). His license authorizes storage of nine afa from December 1 to

April 30 for irrigation of a 3/4-acre parcel and for recreational, stockwatering and wildlife enhancement purposes. Protestant Ferguson has stated that his protest may be dismissed if the applicants' dams have outlet pipes which will remain open on December 1 of each year and left open until his pond is full.

8. Protestant Harry H. Baker, who has succeeded to the interest of the protestant Davis, has agreed with applicant Starner to a reduction of the latter's storage season to a period from November 1 to June 1 and the protest has since been dismissed.

9. Steve Ortega appeared at the investigation and proceedings in lieu of hearing as an interested party. His concern is with Application 24030 (Cross).

He diverts from Bean Gulch between the lands of the applicants Cross and Hall under apparent riparian right. His maximum use of water is approximately 7,200 gallons per season for his four head of stock and the irrigation of several fruit trees. His season of use is from approximately the first of November through the month of April. His concern is principally with the availability of water during the early part of the storage season. He has stated that there is plenty of water available to the applicants during the winter.

Availability of Unappropriated Water

10. Madera operates a gaging station on the Fresno River approximately 15 miles above its confluence with the San Joaquin River. The gaging station records, which cover the years 1939

through 1960 and 1963 through February 1971, show that every year there has been water passing the gaging station. Use of water between the gaging station and the mouth of the Fresno River is not substantial in relation to the supply available during most years. The minimum quantity passing the gaging station for the period of record was 202 af in 1957, while the maximum quantity was 234,491 af in 1969. The average annual quantity for the period of record was 34,554 af.

11. Decision 854 issued April 26, 1956, by the Board's predecessor found that unappropriated water in the Fresno River occurs seldom, if ever, during the months of May through October. Routing studies of the Bureau cited in Decision 1407 show surplus water available for storage only from December 1 to April 30. Also, the records of the flow at Madera's gaging station show there is not sufficient flow in the Fresno River during the month of November to justify including that month in the storage season in any permit issued pursuant to these applications. There has been no showing that a different conclusion is warranted at the present time, and any permits issued on Applications 23782, 24003, and 24030 should exclude the period from May 1 to November 30 from the storage seasons.

12. The Bureau concluded from its studies that the Hidden Project will develop an average annual new water supply of 23,800 af. Decision 1407 of the Board, adopted on January 4, 1973, ordered that a permit be issued to the Bureau subject to upstream appropriations by storage for stockwatering and

recreational purposes, provided the individual capacity of reservoirs for such purposes does not exceed ten af. The appropriations under Application 23782 is within that reservation and meets the conditions of Decision 1407 if the reservoir is kept free of phreatophytes. In addition to reserving water for small upstream stockwatering and recreational reservoirs, Decision 1407 ordered that the Bureau's permit be subject to depletion of flow into Hidden Reservoir of 2,000 afa by upstream appropriations subsequent to May 22, 1959, the date Application 18733 (Bureau) was filed. The depletion resulting from appropriations under Applications 24003 and 24030 will come within the limits of that 2,000 af reservation.

Disposition of Ferguson and Ortega Protests

13. In order to protect protestant Ferguson's prior right (License 10070) a term should be included in the permits issued pursuant to Applications 23782 and 24030 of applicants Hall and Cross, respectively, requiring them to release water in the event Ferguson's reservoir does not fill.

14. As previously found, the diversion season covered by all three applications should be limited to the period from December 1 through April 30. This should satisfy Ortega's objection to the applications as he feels there is ample water later in the winter. Also, because of his location on Bean Gulch, any release of water to meet the downstream rights of Hall and Ferguson will protect him.

15. Unappropriated water is available to supply the applicants and, subject to suitable conditions, such water may be diverted and used in the manner proposed without causing substantial injury to any lawful user of water.

16. The intended use is beneficial.

Environmental Considerations

17. All environmental reviews required in compliance with the California Environmental Quality Act of 1970 have been completed.

From the foregoing findings, the Board concludes that Applications 23782, 24003 and 24030 should be approved in part and that permits should be issued to the applicants subject to the limitations and conditions set forth in the order following.

The records, documents, and other data relied upon in determining the matter are: Applications 23782, 24003 and 24030 and all relevant information on file therewith, particularly the report of field investigation made on October 4, 1973.

ORDER

IT IS HEREBY ORDERED that Applications 23782, 24003 and 24030 be approved in part and that permits be issued to the applicants subject to vested rights and to the following limitations and conditions:

1. (a) the water appropriated pursuant to Application 23782 shall be limited to the quantity which can be beneficially used and shall not exceed ten acre-feet per annum (afa) by storage to

be collected from December 1 of each year to April 30 of the succeeding year.

(b) The water appropriated pursuant to Application 24003 shall be limited to the quantity which can be beneficially used and shall not exceed 7.7 afa by storage to be collected from December 1 of each year to April 30 of the succeeding year.

(c) The water appropriated pursuant to Application 24030 shall be limited to the quantity which can be beneficially used and shall not exceed 18 afa by storage to be collected from December 1 of each year to April 30 of the succeeding year.

2. This permit does not authorize collection of water to storage outside the specified season to offset evaporation and seepage losses or for any other purpose.

3. The amount authorized for appropriation may be reduced in the license if investigation warrants.

4. The permit issued pursuant to Application 23782 shall contain the following permit terms:

"After the initial filling of the storage reservoir, permittee's right under this permit extends only to water necessary to keep the reservoir full by replacing water beneficially used and water lost by evaporation and seepage, and to refill if emptied for necessary maintenance or repair. Such right shall be exercised only during the authorized diversion season."

"To the extent the reservoir covered under License 10070 does not fill by April 30 of each year, permittee shall release water stored during the current storage season. This term does not require the release of water stored in prior years, nor does it require release of water to make up deficiencies caused by the use or release during the current storage season of water stored in the reservoir covered under License 10070."

5. The permit issued pursuant to Application 24030 shall contain the following permit term:

"To the extent the reservoirs covered under License 10070 and under rights granted by any entitlement issued pursuant to Application 23782 do not fill by April 30 of each year, permittee shall release water stored during the current storage season. This term does not require the release of water stored in prior years, nor does it require release of water to make up deficiencies caused by the use or release during the current storage season, other than in compliance with terms of existing permits or licenses, of water from the reservoirs covered under License 10070 or under rights granted by any entitlement issued pursuant to Application 23782."

6. Actual construction work pursuant to Applications 23782 and 24030 shall begin on or before two years from date of permit and shall thereafter be prosecuted with reasonable diligence, and if not so commenced and prosecuted, these permits may be revoked.

7. Said construction work shall be completed on or before December 1, 1979.

8. Complete application of the water to the proposed use shall be made on or before December 1, 1980.

9. Progress reports shall be submitted promptly by permittee when requested by the State Water Resources Control Board until license is issued.

10. Pursuant to California Water Code Section 100, all rights and privileges under this permit and under any license issued pursuant thereto, including method of diversion, method of use, and quantity of water diverted, are subject to the continuing authority of the State Water Resources Control Board in accordance with law and in the interest of the public welfare to prevent waste, unreasonable use, unreasonable method of use, or unreasonable method of diversion of said water.

This continuing authority of the Board may be exercised by imposing specific requirements over and above those contained in this permit with a view to minimizing waste of water and to meeting the reasonable water requirements of permittee without unreasonable draft on the source. Permittee may be required to implement such programs as (1) reusing or reclaiming the water allocated; (2) restricting diversions so as to eliminate agricultural tailwater or to reduce return flow; (3) suppressing evaporation losses from water surfaces; (4) controlling phreatophytic growth; and (5) installing, maintaining, and operating efficient water measuring devices to assure compliance with the quantity limitations of this permit and to determine accurately water use as against reasonable water requirements for the authorized project. No action will be taken pursuant to this paragraph unless the Board determines, after notice to affected parties and opportunity for hearing, that such specific requirements are physically and financially feasible and are appropriate to the particular situation.

11. The quantity of water diverted under this permit and under any license issued pursuant thereto is subject to modification by the State Water Resources Control Board, if, after notice to the permittee and an opportunity for hearing, the Board finds that such modification is necessary to meet water quality objectives in water quality control plans which have been or hereafter may be established or modified pursuant to Division 7 of the Water Code. No action will be taken pursuant to this

paragraph unless the Board finds that (1) adequate waste discharge requirements have been prescribed and are in effect with respect to all waste discharges which have any substantial effect upon water quality in the area involved, and (2) the water quality objectives cannot be achieved solely through the control of waste discharges.

12. Permittee shall allow representatives of the State Water Resources Control Board and other parties, as may be authorized from time to time by said Board, reasonable access to project works to determine compliance with the terms of this permit.

13. Permits issued pursuant to Applications 23782 and 24030 shall contain the following term:

"Permittee shall install and maintain an outlet pipe of adequate capacity in his dam as near as practicable to the bottom of the natural stream channel, or provide other means satisfactory to the State Water Resources Control Board, in order that water entering the reservoir which is not authorized for appropriation under this permit may be released."

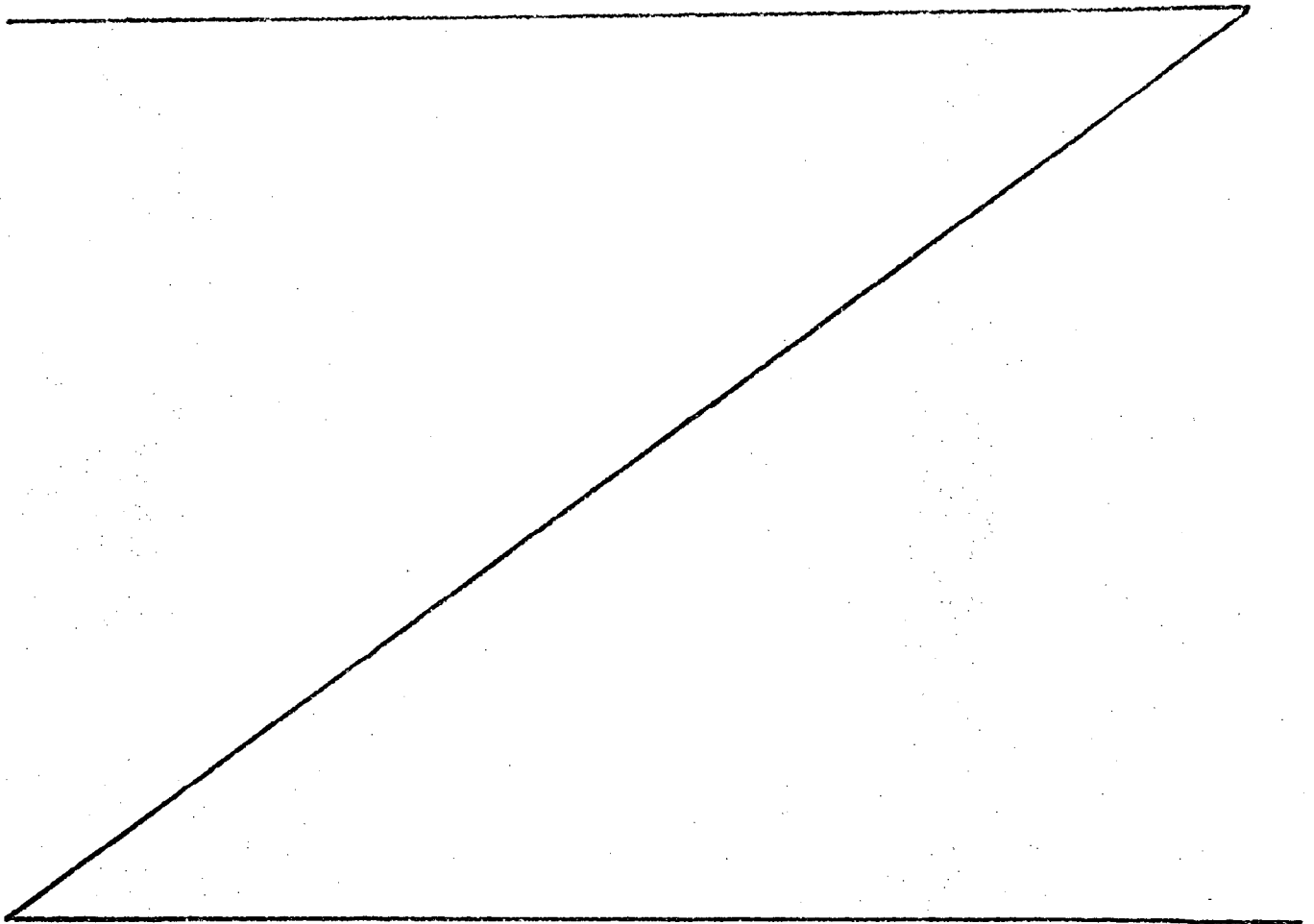
14. The permit issued pursuant to Application 24003 shall contain the following term:

"Permittee shall, when required by the State Water Resources Control Board, install and maintain an outlet pipe of adequate capacity in his dam as near as practicable to the bottom of the natural stream channel, or provide other means satisfactory to the Board, in order that water entering the reservoir which is not authorized for appropriation under this permit may be released."

15. Permittee shall install a staff gage in his reservoir meeting approval of the State Water Resources Control Board for the purpose of determining water levels in the reservoir.

16. Permittee shall keep the reservoir free of phreatophytes.

17. In order to prevent degradation of the quality of water during and after construction of the project, prior to commencement of construction, permittee shall file a report pursuant to Water Code Section 13260 and shall comply with any waste discharge requirements imposed by the California Regional Water Quality Control Board, Central Valley Region, or by the State Water Resources Control Board.



18. The permits issued pursuant to Applications 23782 and 24003 shall contain the following term:

"This permit is subject to the continuing authority of the State Water Resources Control Board to reduce the amount of water named in the permit upon a finding by the Board that the amount is in excess of that reasonably needed to be held in storage for the authorized uses. No action will be taken by the Board without prior notice to the owner and an opportunity for hearing."

Dated: December 16, 1976

We Concur:

s/JOHN E. BRYSON

John E. Bryson, Chairman

s/W. DON MAUGHAN

W. Don Maughan, Vice Chairman

s/W. W. ADAMS

W. W. Adams, Member

s/ROY E. DODSON

Roy E. Dodson, Member

s/JEAN AUER

Jean Auer, Member